

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID**

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Mat. Appeal. No. 246 of 2007

OP. (G&W) No. 1601/2005 of FAMILY COURT, NEDUMANGAD

APPELLANT:

**SHAHUL HAMEED, S/O. YUNUS, AGED 59 YEARS,
RESIDING AT THADATHARIKATHU VEEDU,
GANAPATHIYAMKONAM, KODUVAZHANNOOR
NAGARoor VILLAGE, THIRUVANANTHAPURAM.**

BY ADV. SMT. K. KUSUMAM

RESPONDENT:

**SUBAIR, S/O. ALIYARUKUNJU, AGED 40 YEARS,
RESIDING AT AJAS MANZIL, PANTHULLA PUTHUSSERI
MUKKU, THOTTAKKAD, KARAVARAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT.**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD
ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

MAT. APPEAL NO. 246 OF 2007

Dated this the 20th day of September, 2007.

J U D G M E N T

Kurian Joseph, J.

This is an appeal filed against the judgment in O.P. (G&W) No. 1601/2005 on the file of Family Court, Nedumangad (O.P. 1689/2004 of Family Court, Trivandrum). That was a petition filed by the respondent for guardianship and custody of his minor child by name Ajas Mohammed borne to the daughter of the appellant by name Rehmath. She is no more.

2. According to the appellant, Rehmath was killed by the respondent. Be that as it may, it is seen that the appellant along with his wife who are grandparents of the child are before the Family Court in O.P. 1531/2005 for guardianship and custody. Without any reference to that, Family Court in O.P. (G&W) 1601/2005 passed an order as if it is an agreed order. According to the appellant, there is no agreement.

3. As per the judgment, father/respondent is to pay maintenance at the rate of Rs. 400/- per month and the child will

be permitted to be seen by the father on all 3rd Saturdays at 10 a.m in the court for one hour. Learned counsel for the appellant submits that there is no settlement as is referred to in the judgment, it will not be conducive at all for the child to be seen by the father who is alleged to be the murder of his mother at this juncture and at any rate unless the original petition filed by them as O.P. 1531/2005 is also consolidated with the petition filed by the father, serious prejudice will be caused.

4. It is further submitted that on occasions child was seen by the father, minor child was threatened. Despite service of notice, there is no appearance for the respondent.

5. Having heard the counsel for the appellant, we are of the view that it is only proper that the Family Court consolidates both original petitions for guardianship, one filed by the grandparents and other by the father and disposes of the same together. It is also significant to note that in the judgment under appeal, there is no whisper regarding the guardianship at all.

For all the above reasons, we set aside the judgment in O.P. (G&W) No. 1601/2005 on the file of Family Court,

Nedumangad remitting the matter to the Family Court to be tried along with O.P. No. 1531/2005.

**KURIAN JOSEPH
JUDGE**

**HARUN-UL-RASHID
JUDGE**

smp